



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 035371/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
DATE 29/07/2025	
LENYAI J	

In the interlocutory application between:

KURT ROBERT KNOOP

First Applicant

JOHAN LOUIS KLOPPER

Second Applicant

JUANITO MARTIN DAMONS

Third Applicant

KGASHANE CHRISTOPHER MONYELA

Fourth Applicant

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Fifth Applicant

OPTIMUM COAL MINE (PTY) LTD

Sixth Applicant

OPTIMUM COAL TERMINAL (PTY) LTD

Seventh Applicant

And

RONICA RAGAVAN

First Respondent

DHANASEGARAN ARCHERY

Second Respondent

KOORNFONTEIN MINES (PTY) LTD

Third Respondent

In Re:

In the matter between:

TEGETA EXPLORATION AND RESOURCES (PTY) LTD	First Applicant
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KOORNFONTEIN MINES (PTY) LTD	Second Applicant
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OPTIMUM COAL MINES (PTY) LTD	Third Applicant
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OPTIMAL COAL TERMINAL (PTY) LTD	Fourth Applicant
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RONICA RAGAVAN	Fifth Applicant
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DHANASEGARAN ARCHERY	Sixth Applicant
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RAYMOND PETER VAN ROOYEN	Seventh Applicant
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And

KURT ROBERT KNOOP	First Respondent
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JOHAN LOUIS KLOPPER	Second Respondent
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JUANITO MARTIN DAMONS	Third Respondent
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KGASHANE CHRISTOPHER MONYELA	Fourth Respondent
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PETRUS FRANCOIS VAN DEN STEEN N.O	Fifth Respondent
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ALL AFFECTED PARTIES OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD AS REFLECTED IN "A"	Sixth Respondent
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ALL AFFECTED PARTIES OF KOORNFONTEIN MINE (PTY) LTD AS REFLECTED IN "B"	Seventh Respondent
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ALL AFFECTED PARTIES OF OPTIMUM COAL MINE (PTY) LTD AS REFLECTED IN "C"	Eighth Respondent
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ALL AFFECTED PARTIES OF OPTIMUM COAL TERMINAL (PTY) LTD AS REFLECTED IN "D"	Nineth Respondent
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THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Tenth Respondent
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Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 29 July 2025.

JUDGMENT

LENYAI J

- [1] Initially this matter was an opposed interlocutory application for a stay of the main application enrolled for hearing on the 22nd July 2025, pending the final adjudication and determination of an appeal under case number 312/2024 before the Supreme Court of Appeal (SCA).
- [2] It is common cause that the appeal was argued in the SCA on the 19th May 2025 and judgement was handed down on the 30th June 2025 in favour of the applicants.
- [3] The applicants aver that the appeal has been determined, and the relief sought by them in the stay application is now moot and ineffective.
- [4] The applicants submit that the first and second respondents (respondents) delivered an application for leave to appeal against the SCA's order to the Constitutional Court on the 15th July 2025. They have until the 29th July 2025 to deliver their answering affidavit in opposition to the application for leave to appeal, which they intend to do.
- [5] The applicants further submit that the respondents refused to consent to the withdrawal of the stay application and also continue to refuse to stay the main

application pending the outcome of their application to the SCA and eventually the Constitutional Court.

- [6] The applicants aver that they must now seek a stay of the main application pending the outcome of the application for leave to appeal in the SCA. They contend that the current stay application is moot and cannot serve that purpose as it does not address the SCA's judgment nor the impending Constitutional Court proceedings.
- [7] The applicants aver that the current stay application is procedurally and substantially outdated. They engaged the respondents and proposed that the stay application be postponed so that the relief sought therein could be amended to deal with the SCA's judgment and the application to the Constitutional Court. The respondents rejected their proposal and insisted that the stay application should proceed. The respondents are of the opinion that the current application includes the SCA judgment and the Constitutional Court proceedings, even though those events are not addressed in the current papers.
- [8] The applicants submit that they are now before court to seek the leave of the court to withdraw the stay application in terms of Rule 41. They further contend that it is not the function of a Court to compel a party to persist with proceedings against their will, nor to inquire into the reasons for a *bona fide* withdrawal. The applicants rely on the matter of **Levy v Levy 1991 3 SA 614 (A) at 620B**.
- [9] The applicants aver that the fundamental question is whether the respondents will suffer any injustice as a result of the withdrawal of the interlocutory application. They submit that no such injustice arises as the respondents will be free to pursue the main application should they elect to do so.

- [10] As to costs, the applicants submit that the costs should be reserved for later determination, either in the main application or in any subsequent stay application. That court will be better placed to assess the full factual context, including the present developments and the reasons for the withdrawal. They further submit that it would be artificial and premature for this court to traverse the entire record, which has been overtaken by events, solely to determine costs.
- [11] The respondents on the other hand contend that the current stay application should proceed as it includes the subsequent appeal to the Constitutional Court. They seek a dismissal of the stay application of the main application, together with costs.
- [12] The respondents further contend that the withdrawal of the stay application will cause further unreasonable delay as this would result in a fresh stay application by the applicants. They will suffer prejudice and injustice in that the applicants will rake in fees of R 2 million per month.
- [13] The respondents submit that the stay application is an abuse of process launched solely to delay the hearing of the main application launched during October 2022, which is an application for the removal of the business rescue practitioners and the granting of some declaratory orders.
- [14] The respondents further argue that the applicants purported to withdraw the stay application on the 18th July 2025 without the leave of the Court or their consent which is contrary to Rule 41(1)(a). The respondents rely on the matter of **Levy** matter referred to above wherein the Court dealt with the circumstances wherein the Court can give consent to withdraw a matter.

[15] The respondents further rely on the matter of **APA AFRICA (PTY) LTD v MEL-ROSE ARCH INVESTMENTS HOLDINGS (PTY) LTD and 3 Others (032219/2023) [2023] ZAGPJHC 510 (18 May 2023) @ paragraph 20**, where the court held that:

*"It is trite that in terms of Rule 41(1)(a) a withdrawal of proceedings cannot occur unilaterally once a matter has been set down (See: **Border v Madzie 2017 (4) SA 166 at page 170 paragraph 8**). In the absence of consent or leave a purported notice of withdrawal will be invalid."*

[16] At the heart of this withdrawal application is Rule 41 of the Rule of Court which provides for withdrawal, settlement, discontinuance, postponements as well as abandonment of proceedings. Specifically, Rule 41(1)(a) provides as follows:

15.1 *"A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the Court, withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs, and the taxing master shall tax such costs on the requirement of the other party."*

[17] It is trite that Courts when making decisions are obliged to carefully consider the specific facts of each case. I am of the view that the outcome of a matter before a Court is not only determined by legal principles but also by the unique circumstances of each matter and the evidence presented before court.

[18] Turning to the matter before me, it is common cause that the SCA had delivered its judgment before the stay application could be heard. In my view the applicants are correct to submit that they cannot proceed with the application as it

has now become moot and it would serve no purpose as the SCA has already granted its judgment.

- [19] The argument by the respondents that the application is broad enough to incorporate the application for leave to appeal the SCA order and the impending Constitutional Court proceedings does not find favour with the Court. The Notice of motion for the stay application is crystal clear in that it states as follows:

“1. That the main application (under the above case number), dated 20 October 2022, be and is hereby stayed, alternatively, interdicted from being heard and/or adjudicated by the Honourable Court, pending the final adjudication and determination of the appeal currently pending before the Supreme Court of Appeal (under case number 312/2024).”

- [20] The stay application has been overtaken by events and despite engaging the respondents to either postpone the stay application in order to amend the current notice of motion, to incorporate the application for leave to appeal the SCA order and the impending Constitutional Court proceedings or to obtain consent from the respondents, the applicants endeavours were rejected by the respondents.

- [21] The **APA** matter does not assist the respondents as in that matter the issue was still live and ongoing and shortly before the hearing the applicant sought to withdraw the matter without tendering the costs. The matter before me is distinguishable from the **APA** matter as the issue before the SCA has already been decided and there is no live issue that is still to be decided by the SCA as

contemplated by the stay application. The matter is now moot and there is no reason for the stay application to proceed.

[22] I am of the view that the delay that the respondents are complaining about cannot be placed at the feet of the applicants as the respondents are free to pursue the main application should they elect to do so.

[23] The applicants had no option but to bring the application to seek the leave of the court to withdraw the stay application, as the withdrawal was occasioned by the fact that the SCA has now delivered a judgment which vindicated them and the relief sought has now become unnecessary as well as the fact that the respondents have refused to consent to a withdrawal. Furthermore, it is impermissible for the applicants to request an order for what they have not asked for in the notice of motion.

[25] The applicants have requested that the issue of costs be postponed for determination at a later, either in the main application or in any subsequent stay application.

[26] Under the circumstances the following order is made:

1. The application to withdraw the stay application is granted with costs reserved.



MMD LENYAI J

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Appellants : Adv L van Tonder

Instructed by : SmitSew Attorneys

Counsel for Respondent. : Adv L van Gass

Instructed by : VDM Attorneys

Date of hearing : 22 July 2025

Date of Judgement : 29 July 2025